

Hoosier Public Radio Corp
15 Wood St
Greenfield IN 46140

August 26, 2004

Federal Communications Commission
445 12th Street SW
Washington D.C. 20554

Re : BRED 20040402ABF WKPB Facility ID 71864 WKUE Facility ID
71860 WDCL FACILITY ID 71857

To : Audio Division, Media Bureau

Request For Termination of WKPB Licensure until Mxed Applications are
Settled
Opposition to Petition To Dismiss Supplement, Et AL
Petition To Deny Supplement

Petitioner has received a filing from Western Kentucky University concerning the time share application filed referenced above. The time share application filed by Hoosier Public Radio (HPR) was filed July 1, 2004. HPR filed a Petition August 2, 2004 when it appeared the Commission may not have recognized the time share application. We believe the August 19, 2004 filing by Western Kentucky University is defective and should be dismissed.

Petitioner notes the Licensee or a member or officer failed to sign or certify the filing and this makes the filing defective.

Petitioner has received a letter from Mr. Brian Madden, Esq, representing Western Kentucky University in which he indicates he has been retained by Western Kentucky University and advises that Western Kentucky University (Western Kentucky) has no interest whatsoever in entering into a time share agreement.

Commission Rules require the Licensee to negotiate and Western Kentucky has refused. As Western Kentucky has no impetus to negotiate we request the Commission cancel the authority of Western Kentucky University to broadcast until this matter is settled. As no local studio or staff exists this action will not harm the public interest. No local service, no local studio, no harm. Western Kentucky is using its status as a Licensee to continue its violation of Commission Rules while HPR can be deprived of access, and while local residents have no radio service from Western Kentucky.

WKPB, WKUE, WDCL

The full power stations of Western Kentucky have not served a local purpose or need and are unmanned and haven't even a local phone number. There is no main studio, no staff, no public inspection file, and there is no local programming. You cannot reach any of its station locations by phone but you can call the

Bowling Green facility if you have questions. These facts are undisputed and uncontested by the Licensee. The Western Kentucky License renewals are defective and that it's operation of WKPB, WKUE, and WDCL were misrepresentations to the Commission.

Using a full power station to rebroadcast another station also means that the application submitted was defective and a misrepresentation has taken place. The applicant certified a local studio and local service but actually broadcasts from another part of Kentucky, Bowling Green, and utilizes it's other full power stations as translators.

The stations broadcast National Public Radio and programs of a specific nature serving Bowling Green Kentucky.

Public Inspection File

With reference to the public inspection file in it's applications, the applicant states the following:

EXHIBIT

IN MAKING THIS CERTIFICATION, THE LICENSEE REVIEWED ITS PUBLIC INSPECTION FILE AND INQUIRED OF CURRENT EMPLOYEES WHO ARE KNOWLEDGEABLE OF THE CONTENTS AND MAINTENANCE OF THE LICENSEE'S PUBLIC INSPECTION FILE. AS USED IN THIS CERTIFICATION, THE PHRASE 'TO LICENSEE'S KNOWLEDGE' MEANS LICENSEE'S ACTUAL KNOWLEDGE, DURING THE PERIOD THAT THE LICENSEE HAS OWNED THE STATION, WITHOUT FURTHER INVESTIGATION OTHER THAN AS DESCRIBED IN THIS EXHIBIT.

BASED UPON AND SUBJECT TO THE QUALIFICATIONS IN THE PRECEDING PARAGRAPH, TO LICENSEE'S KNOWLEDGE, ALL DOCUMENTS REQUIRED BY 47 C.F.R. 73.3526, HAVE BEEN PLACED IN THE LICENSEE'S PUBLIC INSPECTION FILE. THE LICENSEE CANNOT BE CERTAIN IN ALL INSTANCES WHEN THE DOCUMENTS MAY HAVE FIRST BEEN PLACED IN THE FILE, BUT BELIEVES THAT IT HAS COMPLIED WITH COMMISSION REQUIREMENTS AS TO TIMING IN ALL MATERIAL RESPECTS.

While the language within this statement leaves HPR asking, what did they say? We think it means "the Licensee asked someone who probably has looked at the Public Inspection File and they said they think the Public Inspection File is okay. The Licensee didn't look at the file and has no idea where it is or what it is but someone says it exists and that there is something in it. We don't know when things were put in or what things are in but someone told us it exists and things are in it."

In addition it is hard to determine where a local Public Inspection File exists as no one who could be reached by phone at Western Kentucky University knew of a location other than Bowling Green Kentucky where the Public inspection File could be viewed.

Clearly, Western Kentucky University is warehousing several channels and depriving local service to it's listeners. No local staff, no Public Inspection File, No Main Studio.

Are the Applications Defective?

The person who signed the applications for the radio stations of Western Kentucky University is not listed as "owner" in any Ownership report. There is a question if the person signing the application is allowed to sign the renewals. Clearly there are misrepresentations in the applications.

Petition Deadline

HPR filed a timely application for first time service for Sebree Kentucky July 1, 2004. Any argument filed now, long after the application received Public notice, is untimely and should be dismissed.

Negotiations

So why does the Commission establish time share applications? Chief Engineer Chris Scott puts it bluntly and best: "I state on behalf of the licensee that neither it nor station WKPB has any interest in sharing its frequency with Hoosier Public Radio." Parroted by their attorney, Western Kentucky feels no need to have a local studio, staff, public file, or negotiate.

HPR has diligently attempted to negotiate but Western Kentucky can continue Broadcasting while the matter is settled and has no impetus to settle. Cancellation of its authority to Broadcast utilizing full power stations as translators with no main studio or staff will allow each side to be on an even field and require Western Kentucky to get serious about negotiating.

Hearing Issues

There is no meaningful management presence, studio, local phone number, public inspection file, and there is no way for the local population to interact with the station or the Licensee unless they drive over Kentucky roads to Bowling Green. The Commission should note reports of discrimination complaints against the Licensee noted in the applications but these are not disclosed in detail. The Licensee received discrimination complaints but fails to disclose them.

Possible Resolution

An engineering solution in which the Commission would allow a waiver of its Rules for establishment of another station, while allowing modifications to its existing application outside of the time window is a possible solution which Hoosier Public Radio wishes to pursue if Western Kentucky University is too good to provide local programming or share its frequency.

Petitioner is open to an engineering proposal from Western Kentucky University, with appropriate waivers from the Commission to allow another station, on another frequency, to be provided for the use of Hoosier Public Radio. If a waiver is granted (similar to the case of MXed applications) Western Kentucky University could locate another channel which with approval from the Commission and appropriate waivers, could be established for Hoosier Public Radio Corporation.

Hoosier proposes this channel would be within 3 channels of the existing application but would need waivers to allow : 1) City Of License change, 2) non overlap of application contours; 3) Modifications outside of a window to resolve an Mxed application; and 4) other Rules related to a new station and movement to allow same.

CONCLUSION

Western Kentucky University has presented it's hostility to the Commission Rules by having no local staff, no studio, no public file and has been utilizing not 1, not 2 but 3 full power stations as a translators. The Commission should note the contempt of it's Rules and the lack of service to the public Western Kentucky has demonstrated over many years. The refusal to negotiate is simply contempt of Commission Rules equal to the lack of respect for the local communities that receive no local service from the Western Kentucky.

The Commission is currently determining what local service is. HPR indicates the actions of Western Kentucky show what local service is not.

Petitioner has filed the time share application for first time service for Sebree Kentucky to meet the public need and necessity and to ask the Commission to set a standard for what they expect of local stations.

Petitioner is open to an engineering proposal from Western Kentucky University, with appropriate waivers from the Commission to allow another station, on another frequency, to be provided for the use of Hoosier Public Radio.

If such a resolution is permitted Hoosier Public Radio Corporation will allow the policy statement by the Commission with respect to localism and local programming to speak as a remedy for the hundreds of other communities not receiving local programming from their local station.

HPR believes cancellation of the WKPB and associated Western Kentucky Licenses with no main studio or staff is appropriate, justified, and prudent until the matter is settled. Western Kentucky should be placed on the same field as the Mxed applicant and it has been demonstrated there will be no deprivation of service as no service now exists.

Respectfully Submitted

Martin L. Hensley
Hoosier Public Radio Corporation

Certificate Of Service

Petitioner has provided a copy of this filing and attachment to the FCC 445 12th St SW Washington DC 20554 and Leventhal Senter and Lerman 2000K Street NW Suite 600 Washington DC 2006-1809. Petitioner notes the station has no local address, public inspection file, or staff.